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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,447	12/30/2003	Raymond Liberatore	10605-2	4968

7590 10/15/2004

National IP Rights Center, LLC  
Suite 400  
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[REDACTED] EXAMINER

PRUNNER, KATHLEEN J

ART UNIT	PAPER NUMBER
[REDACTED]	3751

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/750,447	LIBERATORE, RAYMOND
	Examiner Kathleen J. Prunner	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 December 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-44 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) 1-44 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.75(f) which requires that if there are several claims, they shall be numbered consecutively in Arabic numerals. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims include claim 10a and two (2) claim 41s.

Misnumbered claims 10a-42 have been renumbered as claims 11-44.

### ***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-31, drawn to a squeezable container with a spreader, classified in class 401, subclass 5.
  - II. Claims 32-36, drawn to a container with a detachable handle and a plunger, classified in class 401, subclass 176.
  - III. Claims 37-39, drawn to a container having a bag disposed therein, classified in class 401, subclass 152.
  - IV. Claims 40-43, drawn to container having a bag disposed therein and utilizing a plunger, classified in class 401, subclass 163.
  - V. Claim 44, drawn to a container having a screw activating mechanism, classified in class 401, subclass 172.

The inventions are distinct, each from the other because of the following reasons:

3. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different

inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

4. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

5. Inventions I and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

6. Inventions I and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

7. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

8. Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

9. Inventions II and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

10. Inventions III and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

11. Inventions III and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

12. Inventions IV and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together, they have different modes of operation, different functions and different effects.

13. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

14. Because these inventions are distinct for the reasons given above and the search required for Invention I is not required for Invention II, restriction for examination purposes as indicated is proper.

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15. Because these inventions are distinct for the reasons given above and the search required for Invention I is not required for Invention III, restriction for examination purposes as indicated is proper.

16. Because these inventions are distinct for the reasons given above and the search required for Invention I is not required for Invention IV, restriction for examination purposes as indicated is proper.

17. Because these inventions are distinct for the reasons given above and the search required for Invention I is not required for Invention V, restriction for examination purposes as indicated is proper.

18. Because these inventions are distinct for the reasons given above and the search required for Invention II is not required for Invention III, restriction for examination purposes as indicated is proper.

19. Because these inventions are distinct for the reasons given above and the search required for Invention II is not required for Invention IV, restriction for examination purposes as indicated is proper.

20. Because these inventions are distinct for the reasons given above and the search required for Invention II is not required for Invention V, restriction for examination purposes as indicated is proper.

21. Because these inventions are distinct for the reasons given above and the search required for Invention III is not required for Invention IV, restriction for examination purposes as indicated is proper.

22. Because these inventions are distinct for the reasons given above and the search required for Invention III is not required for Invention V, restriction for examination purposes as indicated is proper.

23. Because these inventions are distinct for the reasons given above and the search required for Invention IV is not required for Invention V, restriction for examination purposes as indicated is proper.

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24. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

25. If Invention I is elected, then this application contains claims directed to the following patentably distinct species of the claimed spreader:

- I. Figs. 1-3;
- II. Fig. 4;
- III. Figs. 5 and 6;
- IV. Fig. 13;
- V. Fig. 15-18;
- VI. Figs. 19 and 19a;
- VII. Fig. 20;
- VIII. Fig. 21A; and
- IX. Fig. 21B.

26. Additionally, if Invention I is elected, then this application also contains claims directed to the following patentably distinct species of the claimed nozzles:

- I. Fig. 4;
- II. Fig. 4A;
- III. Fig. 11;
- IV. Fig. 14;
- V. Fig. 26;
- VI. Fig. 27;
- VII. Figs. 29, 29a and 30; and
- VIII. Figs. 31 and 31a.

27. If Invention I is elected, then applicant is required under 35 U.S.C. 121 to elect a single disclosed species of spreader and a single disclosed species of nozzle for prosecution on the

merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement, if Invention I is elected, must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

28. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

### *Conclusion*

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044. In mid to late November, 2004, the examiner's office will move to the new complex in Alexandria, Virginia. Upon moving to the new complex, the examiner's new telephone number will be 571-272-4894.

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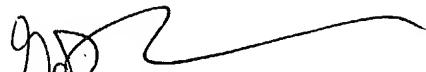
30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

October 5, 2004



Gene Mancene  
Supervisory Patent Examiner  
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